

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA

In re: Chad T. Christian,
Genee A. Christian,

Bky: 04-32535

Debtor(s).

NOTICE OF HEARING AND MOTION
FOR RELIEF FROM STAY

TO: Debtors Chad T. Christian and Genee A. Christian and their attorney April M. Little; Standing Trustee Jasmine Keller; U.S. Trustee; and other parties in interest.

1. Claremont Improvement Corp. ("Claremont"), a creditor in the above-referenced bankruptcy, by its undersigned attorney, moves the Court for the relief requested below, and gives notice of hearing herewith.

2. The Court will hold a hearing on this motion at 9:30 a.m. on October 13, 2004, before the Honorable Dennis D. O'Brien, in Courtroom No. 228A, at the U.S. Federal Courthouse, 316 North Robert Street, St. Paul, Minnesota 55101.

3. Any response to this motion must be filed and delivered not later than October 7, 2003, which is three days before the time set for the hearing (excluding Saturdays, Sundays, and holidays), or filed and served by mail not later than September 30, 2004, which is seven days before the time set for the hearing (excluding Saturdays, Sundays, and holidays). UNLESS A RESPONSE OPPOSING THE MOTION IS TIMELY FILED, THE COURT MAY GRANT THE MOTION WITHOUT A HEARING.

4. This motion arises under 11 U.S.C. § 362 and Fed. R. Bankr. P. 4001. This motion is filed under Fed. R. Bankr. P. 9014 and Local Rules 9006-1, 9013-1 through 9013-3. Claremont seeks relief from the automatic stay of 11 U.S.C. § 362 in

order to proceed in state court to terminate the debtors' possessory rights, if any, to certain real property.

5. The petition commencing this case was filed on April 27, 2004 and the case is now pending in this Court. This Court has jurisdiction over this motion pursuant to 28 U.S.C. §§ 1334 and 157(a), Fed. R. Bankr. P. 5005 and Local Rule 1070-1. This proceeding is a core proceeding.

6. On October 26, 2002, debtor Chad Christian entered into an agreement (the "Lease") with Claremont to lease the real property commonly known as Lot 230, Claremont Mobile Home Park (the "Premises"). A copy of the Lease is attached hereto as Exhibit A.

7. Payments due under the Lease for the months of December 2003 through September 2004 totaling \$1,500.00 plus late charges, have not been made by the debtor(s).

8. On their bankruptcy petition, the debtors list 220 Locust Ave, Owatonna, MN as their present address. Upon information and belief, the debtors vacated the Premises at least six months ago and the Premises have remained vacant since that time.

9. Claremont has been unable to retake possession of the Premises and terminate the debtors' interest in accordance with Minnesota law while the debtors are failing to make payments and Claremont has not been offered adequate protection of its interest in the Premises.

10. The debtors have no equity in the leased Premises. The debtors do not list any rental income being generated by the Premises on Schedule I so the Premises are not necessary to an effective reorganization.

11. The failure of the debtors to make payments pursuant to the Lease or to provide Claremont with adequate protection of its interest in the Premises constitutes cause within the meaning of 11 U.S.C. § 362(d)(1) and 362(d)(2) entitling Claremont to relief from the automatic stay.

12. Claremont requests that any order modifying the automatic stay be effective immediately as permitted by Federal Rule of Bankruptcy Procedure 4001(a)(3).

13. If testimony is necessary as to any facts relevant to this motion, Glenn Kruckeberg or some other representative of Claremont will testify on behalf of Claremont.

WHEREFORE, Claremont respectfully moves the Court for an order, (i) modifying the automatic stay of 11 U.S.C. § 362 so as to allow Claremont to commence state court proceedings to terminate the debtors interest, if any, to the premises, (ii) finding that the stay required by Federal Rule of Bankruptcy Procedure 4001(a)(3) is not applicable, (iii) for such other relief as the Court deems just and equitable.

Dated: September 15, 2004

PILETICH AND SKOKAN, P.A.

/e/ Joseph A. Skokan
Joseph A. Skokan, #251367
1675 South Greeley St
Suite 100
Stillwater, MN 55082
(651) 351-1975 Fax (651) 351-3975

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PILETICH LAW OFFICE

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA

In re: Chad T. Christian
Genec A. Christian,

Bky: 04-32535

VERIFICATION

Debtor(s).

I, Glenn Kruckeberg, an employee of Claremont Improvement Corp., declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge, information and belief.

Dated: 9-15-04


Glenn Kruckeberg
Claremont Improvement Corp.

MOBILE HOME LOT LEASE

Lease agreement made and entered into on Oct. 26, 2003 between Claremont Improvement Corporation, City of Claremont, County of Dodge, State of Minnesota, herein referred to as Lessor and Chad Christian, City of Claremont, County of Dodge, State of Minnesota, herein referred to as Lessee.

In consideration of Lessee's representations in his/her application for tenancy, and lessee's payment of Lease, Lessor leases to Lessee Lot No. 330 in the mobile home park complex commonly known as Claremont Mobile Home Park located at Claremont, MN.

SECTION ONE OCCUPANCY

Only the following individuals may occupy the premises and should any other persons occupy said premises, it shall be considered a material default of this lease:

NAME	FAMILY RELATIONSHIP
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____

SECTION TWO TERM

This Lease shall be for _____ months beginning the first day of _____, 19____. If Lessee takes possession of the premises prior to the commencement date of this Lease, Lessee shall pay rent at the rate and in the manner required by this Lease and such possession in all other respects shall be subject to the applicable provisions of this lease. Lessee shall be a tenant from month to month is Lessee continues in possession after this end of this Lease and if the continuation of possession is with Lessor's prior written consent. As a month to month tenant, Lessee's rent shall be such amount as Lesser may Lawfully establish, and Lessee shall be subject to all provision of this Lease which may be applicable and consistent with a month to month tenancy.

SECTION THREE NOTICE OF INTENTION TO VACATE OR RENEW

At least _____ () day before the end of this lease, Lessee shall notify Lessor in writing that Lessee will sign a new lease or that the premises will be vacated at the end of this lease or that a continuation of possession is desired on a month to month tenancy at the rent set by the lessor in the manner permitted by law and subject to all provisions of this lease which may be applicable and consistent with a month to month tenancy; in the event that lessee desired to sign a new Lease or desired a month to month tenancy, lessee's written notice shall indicate the names and family relationships of each of the occupants. Notwithstanding anything herein to the contrary, lessor shall not be obligated to enter into a new lease or to agree to a continuation of possession on a month to month tenancy. Any of lessee's property at or about the premises at the time lessee vacates the premises shall be deemed to be abandoned by lessee, and lessee hereby authorizes lessor to dispose of same as abandoned property.

SECTION FOUR RENT

During the term of this Lease, lessee shall pay \$150.76 rent per month in advance of the first day of each month commencing with the commencement date of this Lease.

SECTION FIVE LATE CHARGE

Lessee shall pay a late charge of \$2.00 per day if monthly rent is not received by lessor by the 7th day of the month. Penalty will be retroactive to (due date) the first day of said month.

SECTION SIX UTILITIES

The lessor shall provide the lessee with sewer and water at no charge. Lessee shall be solely responsible for all other utility expenses and shall make arrangements directly with the provider of such utility services.

SECTION SEVEN SECURITY DEPOSIT

At the time this Lease is signed, lessee will deposit \$300.76 with lessor to secure lessee's compliance with the terms of this lease, including, but not limited to damage by lessee to lessor's property. Lessee shall receive interest on the security deposit held by lessor as allowed by law. When the lessee moves from the mobile home park, the lessee shall give the lessor a forwarding address, and within three weeks of receiving the address, the lessor shall refund the security deposit plus interest as allowed by law or inform the lessee that the lessor is keeping some or all of the deposit and setting forth the reasons.

SECTION EIGHT QUIET ENJOYMENT

Upon lessee's paying the rent and performing all of the other provisions of this Lease, lessor agrees that lessee shall peacefully and quietly have, hold and enjoy the premises during the term of this lease.

SECTION NINE USE OF PREMISES

Lessee is to occupy the premises as a private dwelling and for no other purpose whatsoever. Lessee shall use and occupy the premises in a clean and wholesome manner and in compliance with all applicable governmental requirements and all rules promulgated by lessor relating to such occupancy. Lessee shall not use or operate any equipment or machinery that is harmful to the premises or which is disturbing to other residents of the mobile home park. Lessee shall not employ any person or person in or about the premises whose employment may, by law, constitute or create a liability on the part of lessor.

SECTION TEN PETS

No animals or pets of any kind shall be kept on the premises, other than those expressly permitted, in writing, by lessor.

SECTION ELEVEN PARKING

If Parking space(s) are provided in conjunction with the lease of the premises, lessee shall occupy and use such parking space(s) as set forth by lessor in its Rules and Regulations.

SECTION TWELVE CONDITION OF PREMISES

Lessee agrees that no representation as to condition or repair of the premises, and no promise to alter, repair or improve the premises has been made except as contained in this Lease. Lessee shall keep the premises, during the term of this Lease, in good repair, and at the expiration thereof, yield and deliver up the same in like condition as when taken, reasonable wear and tear excepted.

SECTION THIRTEEN ALTERATIONS OR IMPROVEMENTS

Lessee shall make no alterations, decorations, additions or improvements in or to the premises or to lessor's equipment or fixtures in the premises. Lessee shall not install any fixture or equipment without lessor's prior written consent, and then only by contractors and mechanics first approved in writing by lessor. Any such installation by lessee without lessor's prior written consent may be removed by lessor, and lessee shall pay lessor's costs thereon on the next monthly rental due date.

In the event the lessor's written consent is received, lessee shall cause such work to be done at such times and in such a manner as lessor shall designate in writing, and lessee shall pay for the same in a prompt manner. Any mechanic's lien filed against the premises or the mobile home park for work claimed to have been done for, or materials claimed to have been furnished to lessee shall be discharged by the lessee within ____ days thereafter. Lessor shall have the right, but not the obligation, to pay or discharge any such mechanic's lien. If lessor should elect to exercise this right, lessee shall pay lessor the amount so expended on the next ensuing monthly rental due date.

SECTION FOURTEEN RESERVED RIGHT TO ENTER THE PREMISES

Lessor reserves the right as may be allowed by law, to inspect, repair, alter or to add to the premises at all reasonable times, and to exhibit the premises to prospective residents, purchasers or others.

SECTION FIFTEEN RULES AND REGULATIONS

Lessee shall comply with all of the attached Rules and Regulations governing the premises and the mobile home park, and shall also comply with all of Lessor's changes and additions to the Rules and Regulations. Concurrently with the execution of this Lease, lessee acknowledges receipt of a copy of the Rules and Regulations of the mobile home park.

SECTION SIXTEEN ADJUSTMENTS

Lessor shall have the right to make the following adjustments in this Lease upon written notice to lessee of not less than 30 days:

- A. Changes required by Federal, State or local law or rule or regulation.
- B. Changes in rules relating to the property, including the premises, which are required to protect the physical health, safety, or peaceful enjoyment of the residents and guests in the mobile home park.
- C. Changes in the amount of rent to cover additional costs in operating the mobile home park incurred by lessor because of increases in ad valorem property taxes, charges for the electricity, heating fuel, water or sanitary sewer services consumed at the mobile home park, or increases in premium paid for liability, fire or worker's compensation insurance.

SECTION SEVENTEEN LESSOR'S NON-LIABILITY

Lessor shall not be liable for damages to person or property sustained by the lessee or lessee's employees, servants, invitees or other persons due to the premises becoming out of repair or arising from leakage of gas, steam, water or sewer pipes, from defective wiring, unless such damage is proximately caused by the negligence of lessor. Lessee shall not be responsible or liable to lessee

for any loss or damage that may be occasioned by or thorough the acts or omissions of persons occupying adjoining premises or any part of the premises adjacent to or connected with the leased premises. In addition, lessor shall not be liable for any damage or injury to any person or property which occurs on the premises resulting from the use of the playground or recreational facilities of lessor unless such damage or injury shall be caused by the negligence of lessor.

SECTION EIGHTEEN ABANDONMENT OR VACATING OF MOBILE HOME

If lessee abandons the mobile home placed on the premises, for whatever reason, and if lessor is required to remove the mobile home, after notice to lessee at the lessee's last known address, lessee shall be responsible for any and all expenses incurred in removing the mobile home or other property from the premises.

SECTION NINETEEN ASSIGNMENT AND SUBLEASE

Lessee shall not assign this Lease nor sublet the premises without first obtaining lessor's written consent.

SECTION TWENTY EMINENT DOMAIN

If, during the term of this Lease, proceedings shall be instituted under the power of Eminent Domain which shall result in an eviction, total or partial, of the lessee, at the time the trial of such proceedings shall commence, this Lease shall be void and the term above shall cease and terminate, and if the lessee continues in possession, he/she shall be a lessee from month to month, anything in this instrument to the contrary notwithstanding.

SECTION TWENTY-ONE DEFAULT

If, lessee should default under this Lease, or if lessee's statement in the rental application are incorrect lessor shall have the right, among others, to terminate this Lease and to repossess the premises and cause lessee to vacate the premises in the manner provided by law. If this should occur, lessee shall pay lessor the expenses incurred in obtaining possession of the premise and all other damages sustained by lessor to the extent permitted by law, including reasonable attorney fees.

SECTION TWENTY-TWO REMEDIES NOT EXCLUSIVE

Each of the right provided in this Lease shall be cumulative.

SECTION TWENTY-THREE SEVERABILITY

If any provision of this Lease should be or become invalid, such invalidity shall not in any way affect any of the other provisions of this Lease which shall continue to remain in full force and effect.

SECTION TWENTY-FOUR WAIVER

If lessor should waive any provisions of this Lease, it shall not be construed as a waiver of a further breach of such provisions.

SECTION TWENTY-FIVE MODIFICATIONS

No modifications of this Lease shall be binding unless in writing, signed by the lessee and by lessor or an authorized agent of lessor.

SECTION TWENTY-SIX RIGHT TO MORTGAGE

Lessor shall have the right to subordinate this Lease to any mortgage now or hereafter placed on the premises of the mobile home park. At lessor's request, lessee shall execute and deliver such documents as may be required in order to accomplish the purposes of this section.

SECTION TWENTY-SEVEN LIABILITY OR MORE THAN ONE LESSEE

In the event that this Lease should be signed as lessee by more than one person, then the liability of the persons signing shall be joint and several.

SECTION TWENTY-EIGHT BINDING EFFECT

The provisions of this Lease shall be binding upon and shall be for the benefit of lessor and lessee and their respective successors in interest.

SECTION TWENTY-NINE TRUTH IN RENTING ACT AND OTHER STATUTORY PROVISIONS

Lessor and lessee specifically agree that this Lease shall not and is not intended to violate or waive any of the provisions of the Truth in Renting Act or any of the statutes referred to in the Truth in Renting Act relating to fitness and habitability, security deposits, civil rights, civil rights of handicapped persons, and consumer protection. If, however, any provision of this Lease does, in fact, violate or waive any of the above statutes, then such provision shall be null and void but the other provisions of this Lease shall continue to remain in full force and effect.

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SECTION THIRTY
INTERPRETATION

This Lease shall be construed according to the laws of the State of Minnesota.

DATE:

CLAREMONT IMPROVEMENT CORP.
LESSOR

BY: _____

Oct 26-02

BY: *[Signature]*

DATE:

[Signature]
LESSEE

Sept. 2003

Dec. - 2003

Jan. - Aug. - 2004

Oct. - Nov. - 2003 per 17 of Claremont

**ADDENDUM TO CLAREMONT MOBILE HOMES RULES & REGULATIONS.
RULE # 8 AND LOT LEASE # 10.**

At the annual Claremont Improvement Corporation meeting held October 29, 1994, a motion was made and approved by the shareholders to permit mobile home residents to have a dog (one) per household (trailer). The dog will need to be confined to the trailer with maximum 15 minutes time period outdoors. The dog cannot be leashed to trees or shrubs. The owner will be responsible for cleaning up after the dog. The dog must be in compliance with all city ordinances which includes dogs needing to be on a leash or accompanied by its owner if trained to commands. All violaters will be subject to eviction.

Claremont Improvement Corporation

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA

In re: Chad T. Christian
Genee A. Christian,

Bky: 04-32535

MEMORANDUM IN SUPPORT OF
MOTION FOR RELIEF FROM STAY

Debtor(s).

Pursuant to 11 U.S.C. § 362 and Fed.R.Bankr.P. 4001(a), Claremont Improvement Corp. (“Claremont”), through its undersigned attorney, submits this Memorandum of Law in Support of Motion for Relief from Stay.

FACTS

The relevant facts are fully set forth in the accompanying Notice of Hearing and Motion for Relief from Stay and are hereby incorporated into this memorandum.

ANALYSIS

Relief from the automatic stay is available pursuant to 11 U.S.C. § 362(d), which states in relevant part:

On request of a party in interest and after notice and a hearing, the court shall grant relief from the stay provided under subsection (a) of this section, such as by terminating, annulling, modifying, or conditioning such stay-

- (1) for cause, including the lack of adequate protection of an interest in property of such party in interest;
- (2) with respect to a stay of an act against property under subsection (a) of this section, if-
 - (A) the debtor does not have an equity in such property; and
 - (B) such property is not necessary to an effective reorganization . . .

The debtors have made no payments to Claremont as required by the Lease since November of 2003. The debtors have not offered Claremont adequate protection of its interest in the Premises nor adequate assurance of future performance. Such failure constitutes “cause” within the meaning of section 362(d)(1) and Claremont is therefore

entitled to relief from the automatic stay. In re Reinbold v. Dewey County Bank, 942 F.2d 1304 (8th Cir. 1991).

Pursuant to section 362(d)(2), relief from the automatic stay is also appropriate if the debtors have no equity and the Premises are not necessary to an effective reorganization. In re Albany Partners, Ltd., 749 F.2d 670 (11th Cir. 1984). The debtors are leasing the Premises and therefore have no equity within the meaning of section 362(d)(2). The debtors do not reside on the Premises nor do they list any income being generated therefrom. The Premises are therefore not necessary to the debtors' plan of reorganization.

CONCLUSION

Claremont has established "cause" within the meaning of 11 U.S.C. § 362(d)(1) entitling it to relief from the automatic stay. In addition, Claremont has shown that relief is appropriate pursuant to 11 U.S.C. § 362(d)(2). Claremont is entitled to an order authorizing it to take possession of the Premises and terminate the debtors' interest in accordance with Minnesota law.

Dated: September 15, 2004

Respectfully Submitted,

PILETICH AND SKOKAN, P.A.

/e/ Joseph A. Skokan
Joseph A. Skokan, #251367
1675 South Greeley St, #100
Stillwater, MN 55082
(651) 351-1975 Fax (651) 351-3975

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA

In re: Chad T. Christian,
Genee A. Christian

Debtor(s).

Bky: 04-32535

UNSWORN CERTIFICATE
OF SERVICE

I, Joseph A. Skokan of the law firm of Piletich and Skokan, P.A., 1675 South Greeley Street, Suite 100, Stillwater, Minnesota 55082, being more than 18 years of age, declare under penalty of perjury that on September 17, 2004 I mailed copies of the foregoing **Notice of Hearing and Motion for Relief from Stay; Memorandum in Support of Motion for Relief from Stay; Order**, by first class mail postage prepaid to each entity named below at the address stated below for each entity:

Jasmine Z. Keller
Chapter 13 Trustee
12 S 6th St #310
Mpls., MN 55402

Chad Christian
220 Locust Ave
Owatonna, MN
55060

Genee Christian
220 Locust Ave
Owatonna, MN
55060

Prescott & Pearson
PO Box 120088
New Brighton, MN
55112

James Geske
Wilford & Geske
7650 Currell Blvd, Suite 300
Woodbury, MN 55125

Dated: September 17, 2004

/e/ Joseph A. Skokan

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA

In re: Chad T. Christian
Genee A. Christian,

Bky: 04-32535

Debtor(s).

ORDER GRANTING RELIEF
FROM THE AUTOMATIC STAY

The above-entitled matter came before the Court for hearing on October 13, 2004 on motion of Claremont Improvement Corp. seeking relief from the automatic stay of 11 U.S.C. § 362. Appearances were noted in the Court's record. Based upon the proceedings, statements of counsel, and all of the files and records herein, the Court now finds that cause exists entitling Claremont Improvement Corp. to the relief requested.

NOW, THEREFORE, IT IS HEREBY ORDERED that the automatic stay of 11 U.S.C. § 362 is immediately terminated as to Claremont Improvement Corp. and it is authorized to terminate its lease and take possession of the real property commonly known as Lot 230, Claremont Mobile Home Park in accordance with Minnesota law. Notwithstanding Fed.R.Bankr.P. 4001(a)(3), this order is effective immediately.

Dated: _____

Dennis D. O'Brien
United States Bankruptcy Judge